

UNAPPROVED - DRAFT

**BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE**

Friday, March 2, 2007

**Department of Health Professions
6603 W. Broad Street, 5th Floor
Richmond, Virginia 23230
Board Room 1**

CALL TO ORDER: The meeting was called to order at 1:12 p.m.

PRESIDING: Edward P. Snyder, D.D.S., Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Jeffrey Levin, DDS, Ad Hoc Member

MEMBERS ABSENT: James D. Watkins, DDS

STAFF PRESENT: Sandra Reen, Executive Director
Emily Wingfield, Chief Deputy Director
Catherine Chappell, Administrative Staff Assistant

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

QUORUM: With three members present, a quorum was established

PUBLIC COMMENT: Dr. Snyder agreed to hear public comment as agenda items are discussed.

MINUTES: Dr. Snyder asked if the Committee had reviewed the minutes of the December meeting. Ms. Pace moved to accept the minutes of the meeting as presented. The motion was seconded and passed.

DISCUSSION ON GUIDANCE DOCUMENT ON INFORMED CONSENT Dr. Levin asked that the Committee consider including an informed consent requirement in the recordkeeping section of the regulations, 18VAC60-20-15. He reviewed the guidance adopted by Maine and provided copies of other state's laws and regulations for staff review. He urged that written informed consent be adopted as the standard for dental practice in order to inform and protect patients and to avoid misunderstandings between the patient and dentist. He added that the regulations relating to sedation currently require informed consent.

Dr. Hunt commented that dental students at VCU are currently documenting consent for more detailed treatment plans but not for all general dentistry.

Dr. Cuttino asked if there would be specific language to place in

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the chart as opposed to blanket consent. Ms. Reen asked Mr. Casway if there are any general provisions of state law on consent requirements for health care. He advised that Code section 8.01 addresses such requirements, noting that the practitioner bears the burden of proving such discussion occurred.

The Committee asked staff to review the information collected by Dr. Levin on other states' practices and draft a proposed guidance document for consideration. Ms. Reen asked if an informed consent requirement needed to be in regulation before a guidance document is issued. Mr. Casway responded that the first step would be amending the regulation to require documentation of informed consent. Ms. Wingfield added that guidance could then be drafted to address best practice.

Ms. Wingfield asked the Committee if they wanted to issue a NOIRA in order to begin the amendment process. Ms. Pace moved that the Committee recommend to the Board that a NOIRA be issued to adopt language in 18VAC60-20-15 to include requirements for documenting informed consent. The motion was seconded and carried.

**PROPOSED
REGULATIONS ON
QUALIFICATIONS FOR
A DENTAL HYGIENIST
TO ADMINISTER
LOCAL ANESTHESIA
AND NITROUS OXIDE:**

Dr. Snyder asked if anyone in the audience wanted to address the proposed regulations.

Dr. Hunt addressed his concerns relating to the current draft. He suggested adding the words "dental or" in 18VAC60-20-81 B.1., C.1, and F. before the words "dental hygiene", noting that the current language excluded accredited dental programs which he urged be included. The Committee agreed to these additions.

Dr. Hunt suggested deleting ", including" after the words "nitrous oxide" in 18VAC60-20-81 C.1(m) and adding "and local anesthetic" instead. The Committee agreed to this change.

Dr. Hunt requested that the regulations explain what level of education would be considered substantially equivalent to the education requirements in 18VAC60-20-81 B. and C. Discussion ensued on how substantial equivalency would be determined. The Committee agreed that the dentist and dental hygienist

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would be responsible for evaluating the hygienist's training and experience against the requirements and making a decision.

Dr. Hunt inquired as to the time frame for implementation of the regulations. Ms. Wingfield advised that the Committee's proposal would be presented to the Board on March 9, 2007. If the Board adopts the language, the regulations would be submitted for administrative review then a 60 day public comment period would occur before the Board could adopt final regulations.

Ms. Bartlam presented the VDHA's suggestions for revisions to the proposed regulations. She requested that the hours of education be changed from 36 to 32 to include courses from adjacent jurisdictions. She asked if 32 hour courses would be considered substantially equivalent to 36 hours. Additionally she asked that approved continuing education providers such as VDHA be allowed to provide the didactic and clinical course not just accredited programs. Lastly she expressed appreciation for allowing training from other states.

The Committee discussed that in the event the dental hygienist took a 32 hour course rather than a 36 hour course, the dentist and hygienist would determine if such training was substantially equivalent based on the content, hours of training and experience of the dental hygienist.

With respect the VDHA's question on offering this training, Ms. Reen referred to the chart on other state's practices and noted that most other states either required training in an accredited program or that the course had to be approved by the Board. Dr. Hunt offered that VCU would like to partner with VDHA in offering such training.

In regards to substantial equivalency, Mr. Reen advised that she had contacted the ADA and learned that they do not have specific standards on training requirements for administration by dental hygienists which the Board might use to develop guidance. She suggested adding the words "in hours of instruction and course content" to D.1 after the word "equivalent" to aid in understanding the Board's intent. The Committee agreed to this amendment.

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Mr. Casway questioned the need for posting a certificate as proposed in 18VAC60-20-81. F. Dr. Hunt suggested posting provided proof to patients of qualifications and asked that some form of notice be required rather than having expired certificates posted. It was noted that some states include certification to administer on their license and that many dental hygienists work temporary positions so that a reliable standard notice would be difficult to achieve.

Mr. Casway advised that a posting requirement was not needed because hygienists are licensed. He recommended deleting section F and amending 18 VAC 60-20-220.A(3) by adding the word "eligible" between the words "by" and "dental" and deleting the words "who hold the certifications specified" then adding the words "in accordance with the requirements in" at the end of the sentence. Options for informing patients about this expanded practice by dental hygienists were considered to include posting individual documentation, a general notice to patients or a notice naming hygienists in the practice qualified to administer. Requiring that patient consent be documented in the patient record was also discussed. Ms. Pace recommended no posting requirement, noting that dental hygienists, as professionals, would explain to the patients what the scope of their practice is. By consensus, the Committee agreed to delete 18VAC60-20-81.F. and to amend 18 VAC 60-20-220.A(3) as recommended by Mr. Casway.

Ms. Bartlam asked what the cost of training would be at VCU. Dr. Hunt advised that the estimated cost for the 36 hour course would be about \$1,400. Ms. Bartlam expressed concern that the VCU cost is high compared to other states.

By consensus, the Committee adopted the proposed regulations as amended to be presented to the Board on March 9, 2007.

**DISCUSSION OF
ACTION ON
EXPANDED DUTIES
OF DENTAL
ASSISTANTS**

Ms. Reen advised that the legislative proposal for expanded duties for dental assistants did not make it through the administrative review process due to opposition to the proposal and concerns about drafting. She asked if the Committee wished to table this matter or work on it further.

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The Committee instructed Ms. Reen to do additional research and to develop another legislative proposal. She was also asked to look at other multi-level professions in DHP and to provide the proposal and report at the next Committee meeting.

**DISCUSSION ON
GUIDANCE
DOCUMENT ON
ADVERTISING**

Ms. Reen advised that the Committee had decided some time ago to develop a guidance document to address advertising concerns. She asked if the Committee wished to pursue the preparation of the guidance document. She advised that the current practice of reviewing anonymous, no harm complaints as offline is working well. She stated she did not think a guidance document is needed. The Committee agreed and tabled this matter.

Dr. Cuttino suggested revising 18VAC60-20-180.E. by eliminating "(Second Edition, 1995-2000), which is hereby adopted and incorporated by reference" and replacing that language with "currently in effect at time of publication". The Committee agreed that the change was needed and that the change should be addressed as a fast track proposal.

ADJOURNMENT

With all business concluded, the Committee adjourned at 3:45 p.m.

Edward P. Snyder, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date